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PILLSBURY WINTHROP, LLP  
P.O. BOX 10500  
MCLEAN, VA 22102

EXAMINER

LUBY, MATTHEW D

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 10/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/877,188

Applicant(s)

FECTEAU ET AL.

Examiner

Matt Luby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-108 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-108 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/472,134.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species V (Figures 6A & 6B) in Paper No. 7 is acknowledged. Applicant's arguments are persuasive and therefore the restriction requirement is withdrawn (claims 1-108 are treated on the merits below).

### ***Preliminary Amendment***

2. The preliminary amendment filed 8/1/02 is in the proper format and an action on the merits follows.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 52-76 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 52 and 67 recite the limitation "wherein a back end of the seat extends behind a rearward-most portion of the frame" and "wherein the seat position is disposed behind a rearward-most portion of the frame". While Applicant's specification does recite the same language, it is unclear how this is to be

accomplished as all of the Figures show the back ends and all positions of the seats (50, 250, 350, 450, 550 and 650) extending forwardly of the rear end of the frames (14, 214, 314, 414, 514 and 614).

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 52-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 52 recites the limitation "the tunnel" in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-21, 24, 26-47, 50, 77-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art, hereafter, AAPA, in view of Yoshioka et al. (5,474,146).

AAPA discloses a snowmobile (110) comprising a frame (Figure 1) having a straddle-type, singular seat (Figure 1), first, second and third seat positions on a singular defined by the seat (e.g., a first spot and second spot on the seat), an engine

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(Figure 1), a drive track (120), a forward-most drive axle (144), two skis (116), and a steering device (e.g., the entire steering unit of 110) having a steering position (a spot on the steering device, 132) disposed forward of the forward-most drive track (see Figure 1), a steering shaft (136) wherein the first seat position is disposed about 565 mm behind the forward most drive axle, the second seat position is disposed behind the first seat position by about 340 or 290 mm, the third seat position is disposed behind the second seat position by about 310 or 345 mm, the steering position is disposed forward of the forward-most drive axle by about 65mm and the frame is between 1493 and 1913 mm long (see Figures 1 and Figure 8 describing various measured distances on a conventional snowmobile). AAPA does not specifically disclose that the angle of the steering shaft is 33° from the vertical. Yoshioka et al. discloses that the angle of the steering shaft of a snowmobile is 33° from the vertical (Figure 1 and column 18, lines 9-15) in order to construct a design for a steering shaft of a snowmobile incorporating a preferred angle for the steering shaft (inherent benefit -- which is that the angle is preferred so the design must necessarily incorporate that angle). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a steering shaft having an angle of 33° from the vertical on the AAPA snowmobile as taught by Yoshioka et al. in order to construct a preferred snowmobile design.

It is noted that since it has been held that discovering an optimum value of a result effective variable (for example an optimum angle of a steering shaft, various seat positions as measured from a forward-most drive axle or a distance between a steering

position and a forward-most drive axle) involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

11. Claims 22, 23, 25, 48, 49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Yoshioka et al. as applied to claim 1, 14, 26 and 40 (respectively) above, and further in view of Atherley (5,944,380).

The modified AAPA snowmobile discloses all of Applicants' claimed invention except for a second seat section that is removable with a cargo space behind the first seat section and beneath the second seat section. Atherley discloses a seat having first and second seat sections (106 and 104, respectively) with a cargo space (44) beneath the second seat section (see Figure 4, for example) wherein the second seat section is removable (see Figure 7) in order to provide the seat exchangeability. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a second removable seat section with a cargo space beneath it on the modified AAPA snowmobile as taught by Atherley in order to provide seat exchangeability.

12. Claims 52-65 and 67-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Yoshioka et al. and Hisatomi (4,502,560).

The AAPA and Yoshioka et al. documents teach all of Applicant's claimed invention (see the previous paragraph - AAPA discloses the tunnel because it discloses a frame that is tunnel-like fitted over the drive track 120) except for a back end of the seat extending behind a rearward-most portion and a support member. (Even though Applicants' disclosure and drawings do not have support for this limitation it will still be addressed.) Hisatomi discloses that back end of a snowmobile seat (23) extends

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behind a rearward-most portion of the frame (12; see Figure 1) and a support member for the seat (see Figure 1) for design choice purposes (column 3, lines 1-2). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a seat that extends behind the frame on the AAPA snowmobile as taught by Hisatomi in order to construct a preferred snowmobile design.

Regarding claims 53-64, the modified AAPA snowmobile does not disclose that the back end of the seat extends behind the frame by about 80 mm, 230 mm, 60 mm or 290 mm. It would have been obvious to modify the modified AAPA snowmobile to have the back end of the seat extends behind the frame 60, 80, 230 or 290 mm since it has been held that discovering an optimum value of a result effective variable (for example an optimum angle of a steering shaft, various seat positions as measured from a forward-most drive axle or a distance between a steering position and a forward-most drive axle) involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

13. Claims 66 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Yoshioka et al. and Hisatomi as applied to claims 65 and 67 above, and further in view of Atherley (5,944,380).

The modified AAPA snowmobile discloses all of Applicants' claimed invention except for a second seat section that is removable. Atherley discloses a seat having first and second seat sections (106 and 104, respectively) wherein the second seat section is removable (see Figure 7) in order to provide the seat exchangeability. It would have been obvious to one of ordinary skill in the art at the time of the invention to

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provide a second removable seat section on the modified AAPA snowmobile as taught by Atherley in order to provide seat exchangeability.

**Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Matt Luby  
Examiner  
Art Unit 3611

M.L.  
September 26, 2002

  
KEVIN HURLEY  
PRIMARY EXAMINER